



**Linda S. Adams**  
Secretary for  
Environmental Protection

# State Water Resources Control Board



**Arnold Schwarzenegger**  
Governor

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

## NOTICE OF PUBLIC HEARING, MEETING TO RECEIVE PUBLIC POLICY STATEMENTS and PRE-HEARING CONFERENCE

### Carmel River in Monterey County

The State Water Resources Control Board will hold a Pre-Hearing Conference, a Meeting to Receive Public Policy Statements and Public Hearing to Determine whether to Adopt a Draft Cease and Desist Order against California American Water

The **Pre-Hearing Conference**  
will commence on

**Wednesday, March 19, 2008, at 9:00 a.m.**

in

the Sierra Hearing Room  
Joe Serna, Jr./Cal EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

The **Meeting to Receive Public Policy Statements**  
will commence immediately following a  
meeting of the State Water Resources Control Board  
on **Tuesday April 1, 2008, no earlier than 1:00 p.m.**

in

the De Anza I Room  
Portola Hotel & Spa at Monterey Bay  
Two Portola Plaza  
Monterey, California

The **Hearing** will commence on  
**Thursday June 19, 2008, at 9:00 a.m.**  
and continue, if necessary,  
on **Friday, June 20, 2008, at 9:00 a.m.**

in

the Coastal Hearing Room  
Joe Serna, Jr./Cal EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

**California Environmental Protection Agency**

## **PURPOSE OF HEARING**

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO). The draft order was issued against California American Water (CAW) on January 15, 2008 by the Assistant Deputy Director for the Division of Water Rights (Division) for the unauthorized diversion of water from the Carmel River in Monterey County.

## **BACKGROUND**

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a CDO only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of the draft CDO to be considered in this hearing, CAW requested a hearing.

CAW owns and operates San Clemente Dam, Los Padres Dam and 21 downstream extraction wells on the Carmel River. Los Padres Dam is operated pursuant to License 11866 (Application 11674A), and authorizes a maximum withdrawal of 2,950 acre-feet of water per annum (afa). CAW also has water rights for 60 acres of riparian land adjacent to the Carmel River. Finally, CAW jointly holds water right Permit 20808A (Application 27614A) with Monterey Peninsula Water Management District, authorizing the appropriation of up to 2,426 afa of Carmel River water to be diverted to underground storage in the Seaside Groundwater Basin.

On July 6, 1995, the State Water Board adopted Order WR 95-10 regarding four complaints filed against CAW. The order required CAW to terminate unlawful diversions from the Carmel River and to comply with specified conditions. The State Water Board found that CAW's rights to divert 3,376 afa from the Carmel River consist of 1,137 afa under pre-1914 appropriative rights, 60 afa under riparian rights, and 2,179 afa under License 11866 (Application 11674A). In Order WR 95-10, the State Water Board found that CAW's diversions were having an adverse effect on: (a) the riparian corridor of the river; (b) wildlife dependant upon instream flows and riparian habitat; and (c) steelhead which spawn in the river.

On January 15, 2008, the Division issued a draft CDO requiring CAW to cease and desist from diverting water from the Carmel River in excess of its legal rights by reducing its unlawful diversions pursuant to a schedule set forth in the CDO. The draft CDO alleges that since 2000, CAW has illegally diverted at least 7,164 afa from the Carmel River and that CAW's unauthorized diversions continue to have adverse effects on the public trust resources on the river.

A copy of the draft CDO is enclosed with this notice and can be found on the Division's website at <http://www.waterrights.ca.gov/Hearings/caw.html>

By letter dated February 4, 2008, CAW requested a hearing on the draft CDO.

## KEY ISSUE

Should the State Water Board adopt the draft CDO? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order? What is the basis for each modification?

## HEARING OFFICER AND HEARING TEAM

State Water Board Members Arthur G. Baggett, Jr. and Gary Wolff will preside as hearing officers over this proceeding. Other members of the State Water Board may be present during the pre-hearing conference, the meeting to receive public policy statements, and the hearing. State Water Board staff hearing team members will include Staff Counsel Buck Taylor, Engineering Geologist Paul Murphey, Water Resource Control Engineer Ernest Mona and Environmental Scientist Jane Farwell. The hearing staff will assist the hearing officers and other members of the State Water Board throughout this proceeding.

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include Yvonne West, Staff Counsel, and Reed Sato, Director of the Office of Enforcement. Other members of the prosecution team, from the Division of Water Rights, include Jim Kassel, Assistant Deputy Director for Water Rights, John O'Hagan, Supervising Water Resource Control Engineer, Mark Stretars, Senior Water Resource Control Engineer, and John Collins, Staff Environmental Scientist.

The prosecution team is separated from the hearing team, and is prohibited from having *ex parte* communications with the hearing officers, other members of the State Water Board and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

## PRE-HEARING CONFERENCE

The hearing officers will conduct a pre-hearing conference to discuss the scope of the hearing and any other procedural issues on **Wednesday, March 19, 2008 at 9:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may, at its discretion, modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

## **MEETING TO RECEIVE PUBLIC POLICY STATEMENTS**

A meeting for the receipt of public policy statements will be held on **Tuesday, April 1, 2008, at no earlier than 1:00 p.m.** in the De Anza I Room at the Portola Hotel & Spa in Monterey, California. The purpose of the meeting is to provide members of the public the opportunity to present non-evidentiary policy statements to the hearing officers and other members of the State Water Board concerning their views on the proposed enforcement action. Persons who wish to address the State Water Board during the public hearing need not file a Notice of Intent to Appear. Policy statements to the State Water Board will be limited to five minutes or such other time as may be established by the hearing officer. Written submissions of oral statements are encouraged. This meeting is **not** the time and place to present evidence for or against the proposed enforcement action. Persons who wish to offer evidence regarding this matter may file a Notice of Intent to Appear for the evidentiary hearing in accordance with the instructions found in this notice. **This meeting will be the only opportunity to present oral public policy statements. Oral statements will not be accepted at the hearing on June 19, 2008. However, written policy statements will be accepted until the beginning of the hearing on June 19, 2008.**

## **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, and qualifications** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**Noon, Friday, March 14, 2008**

Deadline for receipt of Notice of Intent to Appear.

**Noon, Friday, May 30, 2008**

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, and qualifications.

## **IF YOU HAVE ANY QUESTIONS**

During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Staff Counsel Buck Taylor at (916) 341-5188 or by e-mail to [BGTaylor@waterboards.ca.gov](mailto:BGTaylor@waterboards.ca.gov).


**PARKING, ACCESSIBILITY AND SECURITY**

The enclosed maps show the locations and parking for the Portola Hotel in Monterey and the Joe Serna Jr./Cal-EPA Building in Sacramento. The Joe Serna Jr./Cal-EPA Building and the Portola Hotel are accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building or the Portola Hotel are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

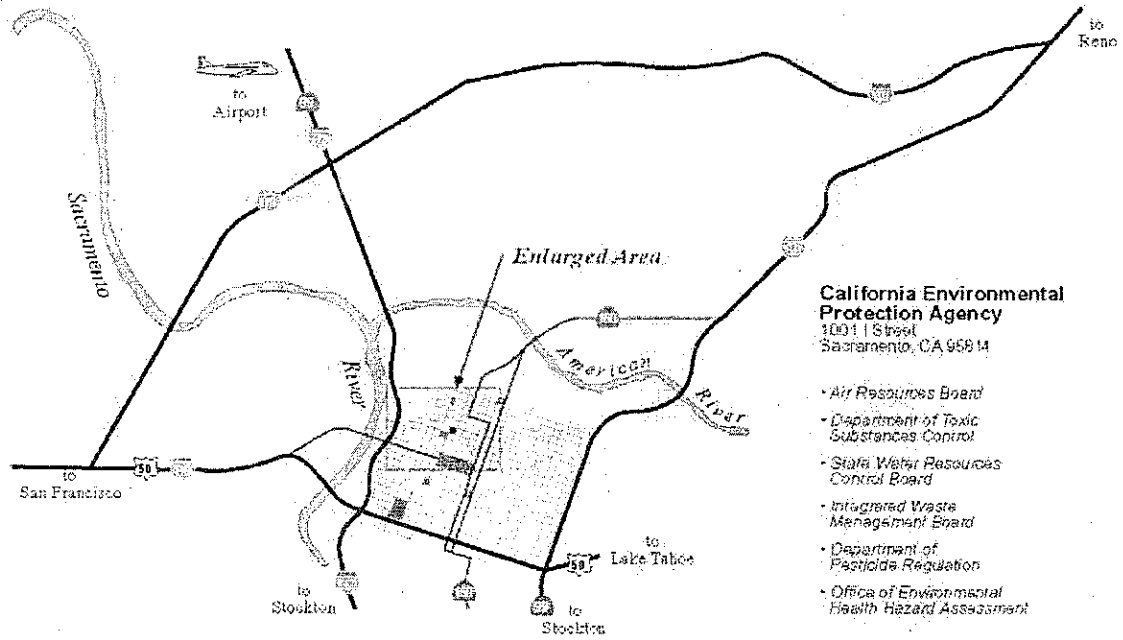
March 5, 2008

Date

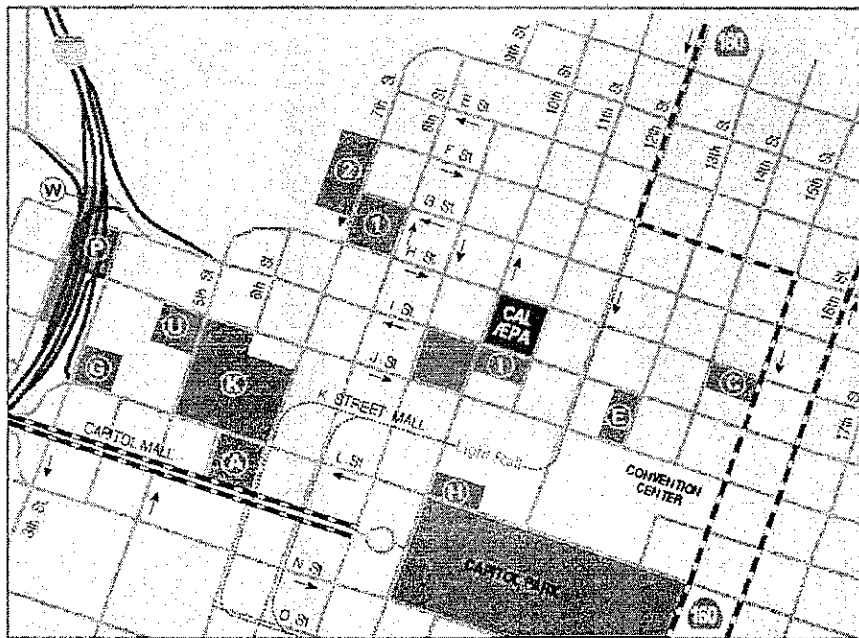


Jeanine Townsend  
Clerk to the Board

Enclosures



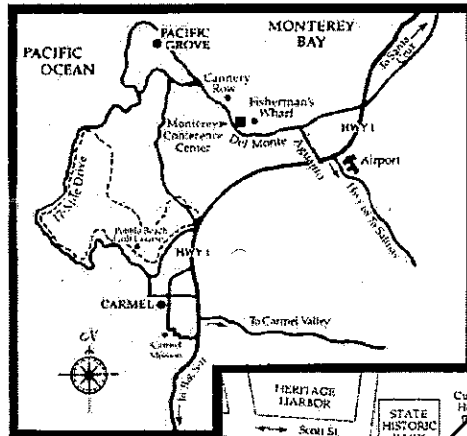
**Parking Lot Locations**



**Parking Lot Locations**

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & I St.)
- Lot G (9th & I)
- Lot H (10th & I)
- Lot I (10th & L 11th & I)
- Lot K (6th & J, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

The Portola Hotel & Spa is located adjacent to the Monterey Conference Center

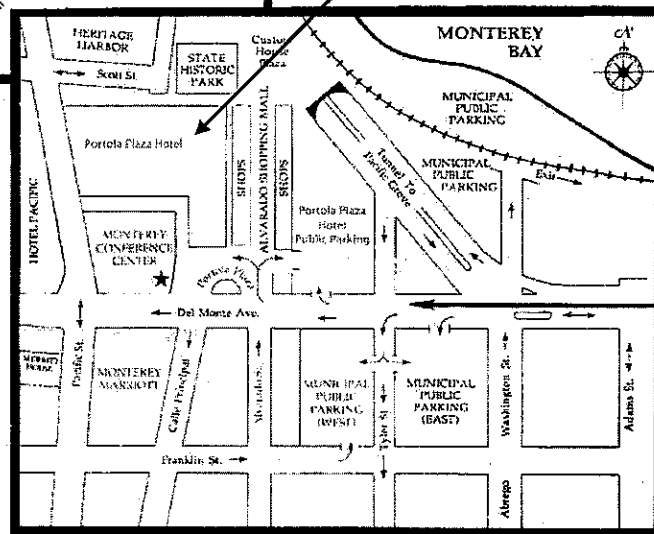


Portola Hotel  
Two Portola Plaza

**PARKING FEES:**

East Garage –  
\$5 All Day.  
Coins or dollar  
bills accepted  
or MC/VISA

West Garage –  
First hour free.  
\$1 per hour –  
maximum \$8 per day.



★ Lead in entrance

**FROM THE NORTH ON HIGHWAY ONE**—Take the Del Monte, Pacific Grove exit. Continue straight for seven stoplights. At the seventh stoplight, get in the left turn lane to continue straight on Del Monte to the Conference Center.

**FROM THE AIRPORT/HIGHWAY 68 FROM SALINAS**—Take the Monterey Fisherman's Wharf exit. At the first stoplight make a right hand turn onto Aguajito. Continue on Aguajito until it ends at Del Monte. From Aguajito make a left onto Del Monte and continue straight for three stoplights. At the third stoplight get in the left turn lane to continue straight on Del Monte to the Conference Center.

**FROM THE SOUTH/CARMEL ON HIGHWAY ONE**—Take the Aguajito exit. Turn left at the first stoplight (going under the freeway). Continue on Aguajito until it ends at Del Monte. From Aguajito make a left onto Del Monte and continue straight for three stoplights. At the third stoplight get into the left turn lane to continue straight on Del Monte to the Conference Center.

# Location and Parking

Monterey Conference Center

Monterey Conference Center, One Portola Plaza, Monterey, CA 93940, (831) 646-3770